

REMARKS

Applicant thanks the Examiner for recognizing that claims 2, 7 and 8 include allowable subject matter.

The remaining claims were rejected as follows:

* Claims 1, 3-5 and 9-13 were rejected as unpatentable over U.S. Patent No. 6,229,263 (Izawa) in view of U.S. Patent no. 5,461,564 (Collins et al.).

* Claim 6 was rejected over the combination of the Izawa and Collins et al. patent in view of U.S. Patent no. 5,465,209 (Sammur et al.).

The claimed subject matter relates to changing the direction of the vehicle lighting unit depending on the attitude (*e.g.*, pitch) of the vehicle. The vehicle height is corrected based on data indicative of an "installation error" of the vehicle height detecting means. The installation error is based on the difference between a reference height value (which corresponds to the vehicle's load state as determined by the identifying means) and an actual vehicle height.

An example of "determining a change in a load state of the vehicle," as recited in claims 1 and 13, is explained in the pending specification as follows:

The load condition of the vehicle is changed by various factors, including (but not limited to) the number and arrangement of passengers or the carrying state of a baggage. Referring to the passenger, the presence of seating of the passenger is detected by a seating sensor. Moreover, the weight of a baggage (such as a trunk) is detected by means of a sensor or information (such as the residual amount of gasoline) is acquired.

(Page 9, lines 21-28)

Like the pending application, the Izawa patent is assigned to Koito. The Izawa patent discloses a control unit for controlling the lighting direction of a vehicle lamp. In particular, the pitch angle is obtained in response to a signal representing the detected height of the vehicle.

The Office action acknowledges that the Izawa patent does not disclose (i) determining a difference in a load state of the vehicle and (ii) storing data indicative of an installation error. However, the Office action alleges that the Collins et al. patent discloses or suggests those features. Applicant respectfully disagrees.

The Collins et al. patent relates to calibrating a suspension control module of a vehicle. The module may be calibrated to within a predetermined tolerances. The Collins et al. patent discloses determining an actual ride height (col. 7, lines 23-31), which includes making adjustments that account for rigid body cross-talk, also called side-to-side lean. In particular, the Collins et al. patent discloses that "the difference between raw signals corresponding to two points on each arm [on the vehicle] is further adjusted . . . for rigid body cross-talk, . . . to determine actual ride height." (Col. 7, lines 24-28) Further adjustments are made to the height sensor output signals based on a deviation (or difference) between the adjusted ride height signals and the height sensor output signals (col. 7, lines 61-67).

However, the Collins et al. patent does not disclose or suggest "determining a change in load state of the vehicle corresponding to at least one of a passenger or a carrying capacity," as recited in claims 1 and 13.

The Office action points to FIG. 8 of the Collins et al. patent as allegedly disclosing that feature. However, that figure simply discloses, calculating a deviation, adjusting a height sensor signal by the deviation, and commanding the vehicle to adjust the ride height (steps 96, 98, 100). Those steps are explained in the Collins et al. patent as follows:

When signals, *the adjusted actual ride height measurements and the height sensor distances*, are in equivalent units, which is done by control module 36 by means of a linear transfer function known to those skilled in the art, control module 36 calculates a deviation or a difference between the two values at block 96. . . .

After calculating the deviation or the *difference between the adjusted ride height signals and the height sensor output signals*, control module 36, at block 98, adjusts the height sensor output signals by an amount equal to the deviation so that there is a correspondence or correlation between the height sensor output signal and the actual ride height of the vehicle.

(Col. 7, lines 50-67) Therefore, the Collins et al. patent does not disclose or suggest “determining a change in load state of the vehicle corresponding to at least one of a passenger or a carrying capacity,”

The Sammut et al. patent also does not disclose or suggest those features.

At least for those reasons, the claims should be allowed.

Furthermore, a person of ordinary skill in the art would not have been motivated to combine the disclosures of the Izawa and Collins et al. patents to obtain the subject matter of the pending claims.

As discussed by the Court of Appeals for the Federal Circuit, a proper conclusion of obviousness under 35 U.S.C. § 103 requires that there be some motivation that suggests the claimed invention as a whole:

[A]n Examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be “an illogical and inappropriate process by which to determine patentability.”

[Citations omitted] To prevent the use of hindsight based on the

invention to defeat patentability of the invention, this court requires the examiner to show motivation to combine the references that create the case of obviousness.

In re Rouffet, 149 F.3d 1350, 1357; 47 USPQ2d 1453, 1457-1458 (Fed. Cir. 1998). Furthermore, the showing of the motivation to combine must be "clear and particular." *See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998); *Teleflex, Inc. v. Ficosa North Am. Corp.*, 63 USPQ2d 1374 at 1387 (Fed. Cir. 2002).


In the present case, there is no such clear and particular motivation. Although the Collins et al. patent discloses calibrating the vehicle ride height, that patent has nothing to do with vehicle lamps, let alone controlling the irradiation direction of such lamps.

For that additional reason, the rejected claims should be allowed.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 7/7/05



Samuel Borodach
Reg. No. 38,388

Fish & Richardson P.C.
Citigroup Center
52nd Floor
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 765-5070
Facsimile: (212) 258-2291